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D.B. CIVIL SPECIAL APPEAL NO. 76/2006
[MAHIPAL SINGH VS. STATE]
Date of Order : 10.07.2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI RAJESH BALIA
HON'BLE JUSTICESHRI MAHESH CHANDRA SHARMA

Mr. G.R.Punia for the appellant
Mr.K.L.Thakur AAG

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Heard learned counsel for the parties.

This appeal is directed against the order of learned Single Judge dismissing the writ petition filed by the petitioner on the ground that alternative remedy is available to take action under the Industrial Disputes Act if the impugned notice of retrenchment is alleged to be invalid for any reason.

The present case arises in the facts and circumstances of to be noticed presently.

According to the petitioner appellant he was appointed as an Assistant Secretary to Gram Panchayat Sardargarh, Panchayat Samiti Suratgarh, in pursuance of the resolution Panchayat dated 17.10.89 by the order of Panchayat Samiti vide its resolution dated 13.2.90. Thereafter the petitioner's services

were terminated on 06.11.1992.

It appears that the said termination order was not challenged immediately but was made subject matter of industrial dispute somewhere in the Year 1998 as a result of which the question about the validity of termination dated 06.11.1992 was referred to Labour Court, Sri Ganganagar.

Vide Notification dated 08.09.99 vide award dated 14.06.2000, which was an ex-parte order, retrenchment was found to be invalid for the reason that though the petitioner appellant had worked for more than 240 days in the 12 Months immediately preceding date of retrenchment, but before the termination was made affective notice as required by Clause [a] of Section 25-F or retrenchment compensation as required by Clause [b] of Section 25-F was not given to the petitioner as a workman.

The retrenchment having been found invalid by the award dated 14.06.2000 the petitioner was directed to be reinstated with 50% back wages w.e.,f. the date of notification of reference until the date of reinstatement.

The said award was challenged before the Court by way of S.B.Civil Writ Petition No.2237/2006 without success. A special appeal against the order of learned Single Judge dated 29.04.2003 was also dismissed on 06.11.2003. Consequently, the petitioner workman was reinstated. After reinstatement the employer has given a notice of one month in terms of Section 25-F [a] for effecting the termination of petitioner's service on the expiry of one month notice. However, before the termination order became effective the petitioner challenged the said notice alleging that retrenchment cannot take place at this belated stage. An interim order was made staying effect and operation of the impugned notice. Hence retrenchment did not take place as per the notices.

Apparently, when the petitioner's services terminated in the Year 1992 and was not challenged until dispute that raised before the reconciliation officer about the validity of his termination, he had waived his remedies if any as a civil servant under general law, but preferred to invoke the provision of Industrial Disputes Act as an industrial workman only.

The concilition proceedings having failed on the report of the concilition officer the matter was referred to Labour Court for adjudication. Thus, the petitioner invited the applicability of

Industrial Disputes Act to himself claiming to be himself a workman within the meaning of the said Act. It is in the aforesaid circumstances when the petitioner succeeded as a workman under Industrial Disputes Act on the ground of non compliance of provision of Section 25 F in 1992, and he was reinstated as a workman, the respondents considering the petitioner as a workman, exercised their power as employer to terminate the services of petitioner working under its establishment by resorting to provisions of the Industrial Disputes Act. The petitioner having placed himself in such position, cannot now turn round and say that the respondents are precluded from exercising the power as an employer under the Industrial Disputes Act to effect the valid retrenchment by complying with the provisions of law. Therefore in our opinion, the petitioner is not entitled to claim a writ of prohibition against the respondents from acting under the Industrial Disputes Act for effecting a valid retrenchment.

So far as the validity of retrenchment is concerned it is premature to say anything about it because petitioner had approached this Court before retrenchment had become effective and as a result of interim order passed by this Court the retrenchment has not become affective on the expiry of the period of notice. The other compliance of Section 25 F could be made before the retrenchment became effective and such stage

having not been reached the question of validity of retrenchment cannot be examined at this stage. Moreover the validity, of termination under Industrial Disputes Act can ordinarily be examined in accordance with provisions of Industrial Disputes Act. Hence no infirmity is found in the order of the learned Single Jude. No other issue has been raised.

Accordingly, this appeal fails and is hereby dismissed. No order as to costs.

(MAHESH CHANDRA SHARMA),J. (RAJESH BALIA)A. C.J.

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